



M O V I N G T H E
AMERICAN
ECONOMY

***Federal Railroad Administration
Railroad Safety Compliance and
Civil Penalty Process--
Overview***

Background on the FRA Railroad Safety Compliance and Civil Penalty Process

The front lines in the Federal Railroad Administration (FRA) civil penalty process are the approximately 400 Federal safety inspectors, whose efforts are supplemented by approximately 165 inspectors from states that formally aid FRA in enforcing the Federal rail safety and hazardous materials regulations and laws.

The members of this workforce--using their expertise in one of five safety disciplines (track, motive power and equipment, operating practices, signal and train control, and hazardous materials)--routinely inspect railroads and other regulated entities for compliance. Inspectors also conduct accident investigations and investigate specific allegations of noncompliance with Federal rail safety and hazardous materials regulations and laws.

Inspectors have a variety of enforcement tools at their disposal of which civil penalties are merely one. When an inspection reveals serious or sustained noncompliance, it is carefully documented in a report. In cases where inspectors determine that the best and most expeditious means of ensuring compliance is to assess a civil penalty, a violation report is prepared, which is essentially a recommendation to the FRA Office of Chief Counsel to assess a penalty based on the evidence contained in the report.

Determining Noncompliance

In determining which instances of noncompliance merit civil penalty recommendations, inspectors must consider:

- The inherent seriousness of the condition or action;
- The kind and degree of potential safety hazard the condition or action poses in light of the immediate factual situation;
- Any actual harm to persons or property already caused by the condition or action;
- The offending person's general level of compliance as revealed by the inspection as a whole.

The offending person may be a railroad, a contractor to a railroad, a shipper of hazardous material, a manufacturer of a tank car, or an individual.

Additional factors are considered where the offending person is a small entity.

Civil Penalty Assessment Issued by FRA

Each civil penalty recommendation is reviewed at the regional level by a supervisory specialist in the appropriate safety discipline in order to determine whether the recommendation is consistent with FRA's national enforcement policy and strategy governing similar circumstances. Guidance is sometimes sought from the Office of Safety in FRA headquarters. Violation reports found to be technically sufficient are sent from the regional office to the FRA Office of Chief Counsel.

The discretion exercised by field personnel and regional managers is a vital part of the Federal rail safety oversight and enforcement process. The experience, expertise, and judgment of safety professionals ensure that the exacting and time-consuming civil penalty process is used to only address those situations warranting the deterrent effect of monetary penalties.

Attorneys in the FRA Office of Chief Counsel's Safety Law Division review each violation report for legal sufficiency and, if it is deemed sustainable in subsequent litigation, assess civil monetary penalties based on guidelines published in the Code of Federal Regulations. Penalties are assessed by issuance of a penalty demand letter (or, for hazardous materials violations, a notice of probable violation) that summarizes the claims and encloses the violation report and documentation of the evidence on which FRA is relying in making its charge. Respondents are notified that they may pay in full or submit in their own defense, orally or in writing, information concerning any defenses or mitigating factors. For violations of the hazardous materials regulations, respondents are entitled, on request, to an administrative hearing.

Once penalties have been assessed, the railroad is provided an opportunity to investigate the charges. The railroad safety statutes, hazardous materials statute, and the Federal Claims Collection Act authorize FRA to settle penalty claims based on a wide variety of mitigating factors. This system permits the efficient collection of amounts in settlement of claims for civil penalties in reasonable amounts without resorting to time-consuming, costly, and generally protracted litigation that does not materially improve safety. As is common in the context of the settlement of civil litigation, the settlement agreement does not include admission of liability. Over its history, FRA has had to request that the Attorney General bring suit to collect a penalty on only a very few occasions.

Civil Penalty Settlement Conferences

The larger, Class I railroads generally make their case regarding any defenses or mitigating information at an informal annual conference covering case files (compilations of various violation reports of the same type together with the charging documents) that have been issued since the previous conference. Thus, in entering into such negotiations, efficiencies and economies of scale are achieved that would be impossible if each case file were addressed separately.

The settlement conferences include lawyers for both FRA and the railroad and, generally, technical experts from both parties. In addition to allowing the two sides to defend their positions and discuss the merits of various claims, these meetings also provide a forum for

addressing current compliance problems. Once the parties have agreed upon an amount for each case, that agreement is formalized in writing. Civil penalties (generally under the hazardous materials regulations and laws), and civil penalty settlements (generally under the rail safety regulations and laws) that are collected by FRA are deposited in the U.S. Government general fund.

Civil Penalty Schedules

Historically, FRA has determined penalty schedules for each particular regulation by assigning a specific dollar amount to it. The schedule constitutes a statement of agency policy, and is generally an appendix to the relevant part of the Code of Federal Regulations. For each regulatory provision, the schedule shows two inflation-adjusted monetary amounts per violation, each between \$550 and \$16,000,¹ the first for an ordinary violation of the provision, the second for a willful violation of the provision (e.g., either by railroads or by individuals).

Penalties may be assessed against individuals only for willful violations. Where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, the penalty may not exceed \$27,000 per violation. The schedule amounts are meant to provide guidance as to FRA's policy in predictable situations, not to bind FRA from using the full range of its authority where extraordinary circumstances warrant.

For more information, see 49 CFR Part 209, *Railroad Safety Enforcement Procedures*, especially Subpart B, Appendix A, and Appendix C.

¹/ Effective October 9, 2007, FRA issued a final rule adjusting the ordinary maximum civil penalty per rail safety violation for inflation, in which the ordinary maximum penalty was raised from \$11,000 to \$16,000 and the penalty schedules were updated to reflect the new dollar figure. FRA is also in the process of reviewing and revising the guideline amounts in these penalty schedules on a provision-by-provision basis (i.e., by section or by smaller division of the section).